

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4915 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

BHANABHAI KHALPABHAI PATEL

Appearance:

1. Special Civil Application No. 4915 of 2001
MR ASIM J PANDYA for Petitioner No. 1
MR SAURABH SOPARKAR, Senior Counsel with
MR TUSHAR P HEMANI for Respondents No. 1-2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/02/2002

ORAL JUDGEMENT

The Union of India has approached this Court with this petition under Article 226/227 of the Constitution of India, to challenge the findings of the Competent

Authority under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("SAFEMA" for short). The order in question was passed by the Competent Authority in respect of properties of respondents Nos. 1 and 2, on 31st October, 2000, in exercise of powers under Section 7 of the SAFEMA. Prior to passing of the order, a Show Cause Notice as required under Section 6(1) of the said Act was issued on 10.5.2000.

2. The Competent Authority came to a conclusion that the respondents herein could not account for the value of the properties in question for less than 50 per cent of the value and as such powers under Section 9 were exercised by the authority and the impugned order was passed.

3. The Union of India is aggrieved by this order on the ground that the Competent Authority has passed the order by drawing inferences and following a procedure which is not contemplated under the Act. In fact, the property ought to have been forfeited instead of giving an option to pay fine in lieu of forfeiture.

3.1 Learned Additional Standing Counsel Mr. Asim Pandya took this Court through the order in question and urged that the Competent Authority has totally ignored the provisions of Section 8 of the SAFEMA, which provides that the burden of proving that the property in question was purchased out of accounted or legitimate income, is on the affected person i.e. the present respondents and in absence of any such material, the Competent Authority has passed the order. He also urged that there is not an iota of evidence for drawing an inference that less than 50% of the property was derived from unaccounted money. When admittedly the consideration for the property flew from a corpus which consisted of both legitimate and illegitimate income, he urged that the petition may be allowed.

4. Notice was issued to the respondent and learned Senior Counsel Mr. Saurabh N. Soparkar appearing for the respondents submitted that apart from the fact that the order in question is appealable under Section 12 of the SAFEMA and apart from the fact that the scope for this petition is very limited even on merits, the order is not assailable.

He has drawn attention of this Court to certain observations made by the Competent Authority in its order as well as certain documents produced by the respondents

alongwith their affidavit-in-reply, namely - the order of the Income Tax Appellate Tribunal. It is clear from what is observed by the Income Tax Authorities that the property possessed by the respondent No.1 - Bhanabhai Khalpabhai Patel was purchased from his capital. This is observed by the authority in the Assessment Order for the Assessment Year 1967-68, which has attained finality and as such it cannot be said that the property in question in respect of respondent No.1 - Bhanabhai Khalpabhai Patel was derived from unaccounted funds. Likewise, so far as the property in respect of respondent No.2 - Smt. Paliben Bhanabhai Patel is concerned, it is indicated in the order of the Income Tax Appellate Tribunal (Annexure "A" to the affidavit-in-reply) that she was given an amount of Rs. 61,000/- by way of gift and that amount of Rs. 61,000/- was deducted from the accounted income of the donor. Therefore, that amount of Rs. 61,000/cannot be said to be an unaccounted source of money and from that amount the property is purchased. This was the reply given by the respondents before the Competent Authority. The Competent Authority however, did not accept this contention fully and applied the provisions of Section 9 on the ground that the funds came from a common source wherefrom legitimate and illegitimate sources were not distinguishable and therefore, pro-rata sources were accepted. In this regard, it would be appropriate to quote provisions of Section 9 of SAFEMA:

"(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under Section 7 and it is a case where the source of only a part, being less than one-half of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation - For the purpose of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be.--

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets."

Thus, Clause (b) of the Explanation 2 to

sub-section (1) of Section 9 states that in case of any part of the assets, the proportionate part of the full value of the consideration for the acquisition of such assets, shall be the value with which the property can be said to have been acquired.

5. In view of the above facts and situation brought to the notice of this Court, this Court is not inclined to accept the contention of the petitioner. Learned Additional Standing Counsel was also not in a position to counter the contention raised on behalf of the respondents. The petition therefore, cannot be entertained and the same is therefore, dismissed. Notice is discharged with no order as to costs.

(A.L.Dave, J.)

*/Mohandas